HSN
HOME SHOPPING NETWORK, INC.

November 20, 1991

ORIGINAL

RECEIVED

NOV 21 1991

Federal Communications Commission
Office of the Secretary

VIA FEDERAL EXPRESS

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 91-221
Review of the ~~Policy~~ Implications of the Changing Video Marketplace

Dear Ms. Searcy:

Transmitted herewith on behalf of Home Shopping Network, Inc. ("HSN") are an original and four copies of its Comments in the above-referenced proceeding.

An additional copy of HSN's Comments are enclosed herewith to be date-stamped by the Commission upon receipt and returned to the undersigned in the enclosed postage prepaid, self-addressed envelope.

If there are any questions concerning this matter, please contact the undersigned.

Very truly yours,

Michael Drayer

Michael Drayer
Senior Counsel

enclosures

.chael Drayer
Senior Counsel

11831 30th Court North, St. Petersburg, FL 33716 (813) 572-8585 Fax (813) 573-0866
P.O. Box 9090, Clearwater, FL 34618-9090

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Review of the Policy Implications	)	
of the Changing Video Marketplace	)	MM Docket No. 91-221
	)	

To: The Commission

RECEIVED

NOV 21 1991

Federal Communications Commission
Office of the Secretary

COMMENTS
OF
HOME SHOPPING NETWORK, INC.

HOME SHOPPING NETWORK, INC.

By: Robert T. Sutton
President

Michael Drayer
Senior Counsel

P.O. Box 9090
Clearwater, Florida 34618-9090
(813) 572-8585

November 20, 1991

TABLE OF CONTENTS

SUMMARY

The Commission has initiated a proceeding to review the policy implications of changes that have taken place in the video marketplace and trends identified and described by the FCC Office of Plans and Policy in its Staff Working Paper entitled "Broadcast Television in a Multichannel Marketplace."

Home Shopping Network, Inc. ("HSN") urges the Commission to modify its multiple ownership rules pertaining to broadcast television stations. Specifically, HSN recommends repeal of the national ownership cap and relaxation of the duopoly rules. As demonstrated herein, these rules are not only anachronisms in today's video marketplace, they no longer serve the Commission's public policy goals. In fact, the rules are contrary to the public interest and their modification likely will advance the agency's public interest objectives. Thus modification of the multiple ownership rules along the lines proposed by HSN is a critical first step in promoting fair competition in the video marketplace and thereby serving the American public.

RECEIVED

NOV 2 1 1991

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Review of the Policy Implications	)	
of the Changing Video Marketplace	)	MM Docket No. 91-221
	)	

To: The Commission

COMMENTS
OF
HOME SHOPPING NETWORK, INC.

Home Shopping Network, Inc. ("HSN") hereby submits these Comments in response to the Commission's Notice of Inquiry, MM Docket No. 91-221 (released August 7, 1991) concerning the policy implications of the changing video marketplace.

INTRODUCTION

HSN, through various subsidiaries, owns and operates 11 full-power, full-service, UHF television stations and one full-power, UHF television satellite station. Also through various subsidiaries, HSN owns and distributes on a nationwide basis four satellite-delivered program services: HSN2 and HSN4 primarily serve broadcast station affiliates, HSN1 serves cable affiliates, and HSN5, HSN's newest channel, is intended to serve both broadcast and cable affiliates. HSN has been at the forefront of broadcasters employing technical and creative innovation to ensure that broadcasting remains a strong presence in the video marketplace of tomorrow.

DISCUSSION

1. The OPP Working Paper, the Role of Broadcast Television and the FCC.

The recently released FCC Office of Plans and Policy Staff Working Paper entitled "Broadcast Television in a Multichannel Marketplace"[1] examined the current state of the video marketplace and likely video landscape at the close of the century based upon an analysis of current trends. The OPP Paper documented what has become apparent to virtually all observers of the video marketplace, that television broadcasters are struggling while multichannel video providers are prospering in a video industry characterized by outmoded regulations that are predicated on a video marketplace dominated by television broadcasters that no longer exists.

It is beyond dispute that there is a compelling national interest in preserving our nation's broadcast television system which, free of charge, provides to all Americans television programming responsive to the needs of their local communities, and which demands that as public trustees local broadcasters provide these communities vital local service through informational programming and emergency broadcasts. It has long been recognized that American television provides an important shared national experience to a society characterized by diversity and, at times, fragmentation -- an

---

[1] Office of Plans and Policy Working Paper #26. Broadcast Television in a Multichannel Marketplace, 6 FCC Rcd. 3996 (1991)(hereinafter "OPP Paper").

experience that cannot remain truly common to all Americans absent free television.

The Commission has recognized that as the expert agency concerning communications matters, it is obligated to ensure periodically that its rules and policies comport with marketplace realities. It is equally true, as the Commission has noted, that its rules are not designed to serve only to correct market imperfections, but also to promote public interest objectives. The agency's preeminent objective is, of course, to preserve the American broadcasting system because of that system's unique contribution to and role in American life and in promoting and facilitating First Amendment rights. HSN believes that the Commission should conclude that for free over-the-air television to have a fair opportunity to compete and continue to serve the American public in the fashion to which Americans have become accustomed, the Commission should repeal its national ownership cap with respect to broadcast television stations and relax its duopoly rules. These rules are anachronisms that threaten the long-term future of a robust television industry in a video marketplace increasingly dominated by cable operators, and their repeal/relaxation will be a critical first step in promoting fair competition in the video marketplace without compromising the FCC's public policy goals.

2. The FCC Should Repeal Its Broadcast Television National Ownership Limits and Relax Its Duopoly Rules.

The OPP Paper has provided strong evidence of, if not a dark, an increasingly cloudy future for the broadcast television industry based upon today's video landscape, current trends and the inherent advantages enjoyed by multichannel video providers subject to less regulation than their broadcast competitors.

Based upon the evidence adduced by its thorough study, the Office of Plans and Policy reached the following conclusions:

> The broadcast television industry has suffered an irreversible long-term decline in audience and revenue shares, which will continue through the current decade. . . Broadcast television stations will experience declining revenues and increasing program costs. Network compensation will fall with network advertising revenues, and national spot advertising will erode partially to cable. The potential for greatly increased competition from cable in local advertising is clear as well.[2]
>
> [C]able subscribers' viewing will shift increasingly to cable-originated channels. . . As cable advertising becomes a better substitute for network advertising, prices of network advertising will fall, and advertising revenue will fall along with audiences. . .[3] Viewers will increasingly see cable and broadcast programming as interchangeable. . . Other nationwide distribution media may develop through some combination of cable and DBS. The networks will continue to lose their uniqueness to both audiences and advertisers, leaving them increasingly three program packagers among a large number.[4]

---

[2] OPP Paper at 159.

[3] *Id.* at 162.

[4] *Id.* at 163.

> Television broadcasters, and the networks that supply them, will clearly decline in relative importance and probably in number and size as well over the next decade. The power of the networks that the Commission has historically sought to curb has succumbed to technology and competition. Broadcast television, however, will remain a **reasonably** prominent feature of the American landscape.[5]

The Commission's paramount concern must be with the public interest, i.e., the viewer.[6] To the average viewer television is what appears on the screen. Unlike wired cable, wireless cable, SMATV and DBS, however, broadcasting is not merely a delivery medium for what appears on a viewer's television screen. Television broadcasters alone have been obligated to provide public service to their communities, the importance of which only would become fully evident to viewers if broadcast channels began to disappear from the video marketplace.

The OPP Paper demonstrated that terrestrial broadcasters, as users of a single-channel delivery medium, would be challenged by competition from multichannel providers and other video service providers who charge for their services even if a level regulatory playing field were in place.[7]

---

5 Id. at 169 (emphasis added).

6 See Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367 (1969).

7 The OPP Paper discusses the possibility of new technologies, such as compression technology, some day allowing terrestrial broadcasters to offer more than one (continued...)

Unfortunately, broadcasters currently must compete on an uneven playing field as well. An important first step towards leveling that field would be for the Commission to repeal its national ownership limits and relax its duopoly rules for television broadcasters.

There is no question that the multiple ownership rules economically disadvantage broadcasters. It also is clear that the repeal of the national ownership cap, and relaxation of the duopoly rules, will not turn television broadcasters into competitive multichannel providers in local markets; but it will provide them with a fairer opportunity to compete on an equal footing. Television broadcasters' ultimate success in the video marketplace will continue to be predicated on their unique qualities -- their local responsiveness, identity and innovations -- as it should be. As public trustees broadcasters are different, and even with repeal and relaxation of the multiple ownership rules, they are likely to compete effectively in the video marketplace against cable systems and other multichannel providers only by accentuating these differences.

---

[7](...continued) program service at the same time. This "possibility" is a slim reed for today's broadcasters to rely upon for their future success in light of the existence of a rapidly maturing multichannel environment dominated by cable systems that at present have no must-carry obligations, yet, in many communities, have grown into powerful local monopolists largely as a result of the compulsory license that allows them to carry only those broadcast channels they wish to carry without paying for retransmission consent.

Specifically, the multiple ownership rules prevent television broadcasters from fully realizing economies of scale both locally and nationally. The Office of Plans and Policy recognized this truth and concluded:

> In today's market, for instance, common ownership of larger numbers of broadcast stations nationwide, or of more than one station in a market, may permit exploitation of economies of scale and reduce costs or permit improved service. Joint newsgathering operations, for instance, might permit improvements in the quality of local news coverage. For these reasons, the Commission should eliminate its broadcast multiple ownership rules, relax the duoply rules to permit common ownership of television stations unless their grade A contours overlap, and consider eliminating the duopoly rules for unaffiliated UHF stations.[8]

HSN supports the Office of Plans and Policy's recommendation that the Commission repeal the national ownership limits and relax its duopoly rules to permit common ownership of television stations unless their Grade A contours overlap, and eliminate the duopoly rules for unaffiliated UHF stations. HSN proposes that for purposes of identifying unaffiliated UHF stations the definition of a television network set out in Section 73.662(i) of the Commission's Rules as adopted in MM Docket No. 90-162 be applied. (The proposed language is attached hereto as Exhibit A.)

The availability of these economies of scale resulting from modification of the multiple ownership rules would allow broadcasters to improve the quality of local news coverage and other public interest programming (*e.g.*, increasing the

---

[8] *Id.* at 170.

quantity and quality of children's programming) thereby benefitting broadcasters through cost savings that permit them to distinguish themselves in their markets, while benefitting the public that would be the recipient of stations' improved service to their local communities.

This last point is a very important one. The Commission has expressed concern over whether repeal and/or relaxation of the multiple ownership rules would have a negative impact on localism and diversity. These questions are important, but the concerns are unfounded. As noted above, repeal of the national ownership limits and relaxation of the duopoly rules will provide incentives for broadcasters to improve their service to their local communities. Moreover, the elimination of outmoded structural regulations in no way compromises the continuing vitality of broadcasters' public interest obligations as public trustees and the Commission's authority to enforce its rules and policies concerning these obligations. The Commission's recent enactment of rules limiting commercials during children's programming and imposing an affirmative obligation on broadcasters to serve children in their audiences illustrates that the public trustee regulatory model is alive and well. Thus localism will not be compromised by repeal of the national ownership cap and relaxation of the duopoly rules.

Likewise, repeal/relaxation of the multiple ownership rules would not have a negative impact on diversity. As a threshold matter, it is entirely appropriate for the Commission to take into account the abundance of program choices from both broadcast and non-broadcast sources available to viewers in the video marketplace. Although, as noted above, broadcasters have a unique role in the video marketplace that must be preserved, the notion of diversity encompasses all available program choices. The potential for improvement in local service from repeal of the national ownership cap, and the fact that HSN proposes only relaxation of the duopoly rules, likely would increase the quality of those choices with regard to television broadcast channels in the marketplace.[9] As a practical matter, by requiring that station managers and general managers operate stations and be responsive to their local communities, local service obligations ensure that group-owned stations provide diverse offerings and not operate as one station with several distant full-power "translators."[10]

---

9 Those individuals unable or unwilling to subscribe to pay television services would particularly benefit from an improvement in the quality of local coverage to a degree that would far outweigh any nominal decrease in diversity of ownership.

10 Commissioner Barrett requests comment on the impact of any proposed rule changes on the rationale for elimination of the Fairness Doctrine or community ascertainment requirements. As to the former, repeal and/or relaxation of the multiple ownership rules has no connection with the First Amendment grounds for repeal of the Fairness Doctrine nor can it possibly have anything more than a de minimis impact, at best, on the multitude of voices in the marketplace that support the Commission's Fairness Doctrine decisions. The Fairness Doctrine was no more than a codification -- enforced
(continued...)

The broadcast television market today is a mature one and, as the Office of Plans and Policy noted in its study, the number of operating broadcast television stations is likely to decline in the coming years. It stands to reason that those stations that would be available to group owners would be failing or marginal stations that could benefit from stronger ownership and without such ownership might otherwise go dark. Theory notwithstanding, the practical reality is that the small owner/operator of a struggling station is less likely to offer expensive, high-quality or innovative programming than a group owner with the resources to make the necessary investments for survival.[11]

Eliminating the national ownership limits could, in fact, prove beneficial to small entrepreneurs and prospective

---

[10](...continued) by the government -- of basic journalistic practice. As noted elsewhere herein, in today's competitive video marketplace, a broadcaster's failure to cover issues of concern to its local community by presenting contrasting viewpoints is a prescription for failure. Likewise, because the elimination of formal community ascertainment requirements concerns the manner in which broadcasters ensure their responsiveness to matters of concern in their local communities and fulfill their public interest obligations, the existence of formal requirements or lack thereof does not bear any relationship to structural regulations.

[11] However, HSN supports the retention of diversity preferences in ongoing comparative television proceedings. The diversification criterion is relevant in that context because in most cases it only plays a role in the outcome where the prevailing party's proposed owners will be integrated into the day-to-day management of the proposed station and thus can have a far greater influence on station operations notwithstanding external (i.e., economic) influences.

minority station owners. HSN has played a leading role among companies in encouraging increased minority ownership of television stations through financing, technical assistance and affiliation agreements with minority existing and prospective station owners.[12] HSN's efforts reflect the company's belief that these undertakings are sound business investments as well as being the right thing to do. However, HSN and others could do more to assist minorities and other new television industry entrants if they were not foreclosed from obtaining more security for providing this assistance in the form of attributable minority ownership interests or options to obtain such interests that could be exercised without regard to the company's current number of attributable interests. The commitment required to assist new industry entrants, financial and otherwise, is simply too great and too risky for interested companies to undertake in the absence of a strong security interest.

CONCLUSION

Technology and competition have eroded both the marketplace and public policy justifications for maintaining the broadcast television multiple ownership rules in their

---

[12] See Statement of Pluria W. Marshall, Chairman, National Black Media Coalition, Before the Commerce, Science and Transportation Subcommittee on Communications, U.S. Senate, June 20, 1991. See also Letter of Daniel K. Tabor, President, National Black Caucus of Local Elected Officials, to Senator Daniel K. Inouye, Chairman of the Subcommittee on Communications, Committee on Commerce, Science and Transportation, U.S. Senate, June 18, 1991.

current form. Concerns over the concentration of ownership on the national level can no longer be taken seriously. Cable television system operators control dozens of channels in individual markets and are constrained in multiple system ownership only by the antitrust laws. In practice this means they have not been constrained at all. Repealing the national ownership cap and relaxing the duopoly rules will make the video regulatory landscape just a bit fairer and thereby promote a stronger, free over-the-air broadcast television industry that will place broadcasters in a position to improve their service to our nation's local communities and, given the crowded video marketplace, will provide them with the incentives to do so.

FOR THE FOREGOING REASONS, HSN urges the Commission to repeal the national ownership limits contained in the agency's multiple ownership rules, and relax its duopoly rules to permit common ownership of television stations unless their Grade A contours overlap, and eliminate the duopoly rules entirely for UHF stations not affiliated with a television network as that term is defined in Section 73.662(i) of the Commission's Rules as adopted in MM Docket No. 90-162.

Respectfully submitted,

HOME SHOPPING NETWORK, INC.

By: ______________________
Robert T. Sutton
President

____
Michael Drayer
Senior Counsel

P.O. Box 9090
Clearwater, Florida 34618-9090

November 20, 1991

EXHIBIT A

A "**television network**" is any person, entity, or corporation providing on a regular basis more than fifteen (15) hours of prime time programming per week (exclusive of live coverage of bona fide news events of national importance) to interconnected affiliates that reach, in aggregate, at least seventy-five (75) percent of television households nationwide; and/or any person, entity, or corporation controlling, controlled by, or under common control with such person, entity, or corporation. Not included within this definition is any television network formed for the purpose of producing, distributing, or syndicating program material for educational, noncommercial, or public broadcasting exhibition, or for non-English language exhibition, or that predominantly distributes programming involving the direct sale of products or services.

Note: "National audience reach" for purposes of this definition is the total number of United States television households in the Arbitron Area of Dominant Influence (ADI) markets in which the stations or regular television station affiliates of the network are located, divided by the total national television households as measured by the most current ADI data publicly available at the start of each television season. "Regular basis" means providing, on average for the prior six months, more than the specified number of hours of programming per week.